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The Demise of the Standard Uninsured Motorist Policy Exclusion

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THE DEMISE OF THE STANDARD UNINSURED MOTORIST POLICY EXCLUSION

The plaintiff, while riding on an uninsured motorcycle owned by his mother, was struck and injured by a motorist who carried no automobile liability insurance. The plaintiff's father carried automobile liability insurance, issued by defendant State Farm Insurance Company, which covered all the members of his household. Although this insurance provided for uninsured motorist coverage, it contained an express exclusion from such coverage for bodily injury sustained by an insured person while occupying an uninsured vehicle, which was owned by the named insured or any member of his household. Plaintiff sought recovery based on his uninsured motorist coverage. The trial court ruled that the policy, by its terms, expressly excluded the uninsured motorist coverage claimed by the plaintiff. The District Court of Appeal, First District, affirmed on appeal. The Supreme Court of Florida, on conflict certiorari review, *held*, reversed: Uninsured motorist coverage is intended by statute to provide the mutual equivalent of automobile liability coverage, and no policy exclusions contrary to the statute are permissible. *Mullis v. State Farm Mutual Automobile Insurance Co.*, 252 So.2d 229 (Fla. 1971).

Uninsured motorist coverage in Florida is governed by Florida Statutes section 627.0851 (1969).[1] No automobile liability insurance can be issued in Florida unless it provides coverage for the protection of those insured for injury caused by uninsured motorists.[2] This coverage, however, may be declined by the named insured.[3]

When interpreting an automobile liability insurance policy, the court will follow the definitions and terms found in the policy itself.[4] Unambiguous language in the policy requiring no special construction or interpretation will be given the meaning it clearly expresses.[5] However, the provisions of a policy which tend to limit or avoid liability are to be construed most strongly against the insurer.[6]

In the past, standard uninsured motorist exclusions, such as the one in the instant case, were relatively free from controversy. In recent years, however, several types of coverage exclusions have been held invalid by the Florida appellate courts as contrary to the intent of Florida Statutes section 627.0851.[7] The principle of law which invalidates these

1. The statute is commonly referred to as the Uninsured Motorist Statute.

2. Such coverage cannot be less than the minimum insurance required for automobile liability insurance policies by FLA. STAT. § 324.021(7) (1969): (1) $10,000 per accident for bodily injury or death of one person (2) $20,000 per accident for bodily injury or death to two or more persons and (3) $5,000 for destruction of property of others in any one accident. Coverage in these amounts must be provided in the policy for those legally entitled to recover damages from an uninsured motorist. FLA. STAT. § 627.0851(1) (1969).

3. FLA. STAT. § 627.0851(1) (1969).

4. Dorrell v. State Fire & Cas. Co., 221 So.2d 5 (Fla. 3d Dist. 1969).

5. Valdes v. Prudence Mut. Cas. Co, 207 So.2d 312 (Fla. 3d Dist. 1968).

6. Carter v. American Fire & Cas. Co., 219 So.2d 462 (Fla. 4th Dist. 1969).

7. *See* First Nat'l Ins. Co. v. Devine, 211 So.2d 587 (Fla. 2d Dist. 1968) (exclusion from

exclusions, as expressed in *Standard Accident Insurance Co. v. Gavin*,[8] is that:

> Insurance companies are *without power* to insert provisions in the policy which would restrict the coverage afforded by the policy in a manner contrary to the intent of the statute.[9]

Florida's public policy concerning uninsured motorist insurance is established in Florida Statutes section 627.0851. Each insured who carries uninsured motorist coverage will be protected to the same extent he would have been, had the offending motorist maintained a minimum liability insurance policy.[10]

This policy was exemplified in a recent case involving an insured driver, who was covered by uninsured motorist protection. The insured driver was run off the road and injured by a hit-and-run driver. The plaintiff was unable to prove the offending motorist was, in fact, uninsured. The insurance policy contained a standard uninsured motorist exclusionary clause, which restricted the insurer's liability in hit-and-run cases to instances of proven physical contact or lack of insurance. The Supreme Court of Florida held that the standard exclusionary clause was void as against public policy, since it attempted to restrict the coverage required by Florida Statutes section 627.0851.[11] Consequently, a person injured by a hit-and-run driver may now recover under uninsured motorist coverage without being required to prove that the offending motorist had no insurance or that there was physical contact. The only requirement is that the offending motorist have no insurance *available* for the protection of the injured party.[12]

Although in *United States Fidelity & Guaranty Co. v. Webb*[13] the First District apparently retreated from its earlier attack on exclusionary clauses,[14] its position was clearly delineated in the subsequent case of *Travelers Indemnity Co. v. Powell*.[15] "[I]t is not the intent of the statute to limit coverage to an insured by specifying his location or the particular vehicle he is occupying at the time of injury."[16]

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class of insured those under age 25); Hartford Accident and Indem. Co. v. Mason, 210 So.2d 474 (Fla. 3d Dist. 1968) (partial exclusion of coverage as to certain vehicles); Davis v. United States Fidelity & Guar. Co., 172 So. 2d 485 (Fla. 1st Dist. 1965) and Zeagler v. Commercial Union Ins. Co., 166 So.2d 616 (Fla. 3d Dist. 1964) (in actions for wrongful death of insured, clauses limiting the right to bring the action).

8. 184 So.2d 229 (Fla. 1st Dist. 1966).

9. *Id.* at 232 (emphasis added).

10. Davis v. United States Fidelity & Guar. Co., 172 So.2d 485 (Fla. 1st Dist. 1965).

11. Brown v. Progressive Mut. Ins. Co., 249 So.2d 429 (Fla. 1971).

12. *Id.*

13. 191 So.2d 869 (Fla. 1st Dist. 1966). An exclusionary clause similar to the one in *Mullis* was held valid; as a result, uninsured motorist coverage was denied. The court stated that the purpose of the exclusion was to indicate that additional uninsured motorist coverage could be purchased to cover the situations affected by the exclusion.

14. *See* notes 7 and 8 *supra* and accompanying text.

15. 206 So.2d 244 (Fla. 1st Dist. 1968). The court held an exclusionary clause similar to the one in *Mullis* to be an "invalid restriction" contrary to FLA. STAT. § 627.0851 (1967).

16. 206 So.2d at 246.

The law in other jurisdictions is clear that an exclusionary clause similar to the one in *Mullis* will be considered as having no effect.[17]

Until the First District Court held in *Mullis* that the exclusionary provisions in the policy effectively limited the insurer's liability,[18] the law in Florida appeared to be settled that uninsured motorist policy exclusions were ineffective and void as against public policy.[19] In order to clarify the situation, the Florida Supreme Court in *Mullis*[20] addressed itself not only to the specific exclusion at bar, but stated in explicit terms that:

> Whenever bodily injury is inflicted upon named insured or insured members of his family by the negligence of an uninsured motorist, under whatever conditions, locations, or circumstances, any of such insureds happen to be in at the time, they are covered by uninsured motorist liability insurance issued pursuant to requirements of Section 627.0851.[21]

The underlying justification for the court's sweeping opinion in *Mullis* is that the Uninsured Motorist Statute was intended to provide uniform and specific insurance benefits to innocent persons injured by the negligence of an uninsured motorist. Such benefits are fixed by statute and are not to be "whittled away" by exclusions and exceptions inserted by insurers into the policies they issue.[22] The parties are presumed to have entered into the insurance agreement with reference to the statute. Thus, the statutory provisions become a part of the insuring agreement.[23]

The Uninsured Motorist Statute applies differently to two classes of insureds. The class of the named insured and relatives residing in his household are covered at *all* times, while all others are covered *only if* they are injured while occupying an insured vehicle with the permission or consent of the named insured. Since the plaintiff in the instant case belonged to the first class, he was intended by the statute to be covered at

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17. *See* Vaught v. State Farm Fire and Cas. Co., 413 F.2d 539 (8th Cir. 1969); Aetna Ins. Co. v. Hurst, 2 Cal. App. 3d 1067, 83 Cal. Rptr. 156 (1969); Gulf Am. Fire & Cas. Co. v. McNeal, 115 Ga. App. 286, 154 S.E.2d 411 (1967); Allstate Ins. Co. v. Meeks, 207 Va. 897, 153 S.E.2d 222 (1967).

18. Mullis v. State Farm Mut. Auto Ins. Co., 231 So.2d 46 (Fla. 1st Dist. 1970), relying on the *Webb* case, note 13 *supra*, for its authority. The conflict in the instant case arose because *Webb* was apparently overruled by the District Court of Appeal, First District, in *Powell*, note 15 *supra*, and several other subsequent cases.

19. *See* note 7 *supra* and accompanying text; Butts v. State Farm Mut. Auto. Ins. Co., 207 So.2d 73 (Fla. 3d Dist. 1968); Forbes v. Allstate Ins. Co., 210 So.2d 244 (Fla. 3d Dist. 1968) (exclusion from protection while occupying public conveyance); National Serv. Fire Ins. Co. v. Mikell, 204 So.2d 343 (Fla. 3d Dist. 1967) (exclusion from coverage while standing outside vehicle).

20. Mullis v. State Farm Mut. Auto. Ins. Co., 252 So.2d 229 (Fla. 1971).

21. *Id.* at 233.

22. *Id. Accord*, First Nat'l Ins. Co. v. Devine, 211 So.2d 587 (Fla. 2d Dist. 1968).

23. Standard Accident Ins. Co. v. Gavin, 184 So.2d 229 (Fla. 1st Dist. 1966).

all times. Thus, the clause which attempted to limit the insurer's liability to the plaintiff was an invalid limitation of coverage.[24]

Considering the number of decisions which have negated exclusionary provisions,[25] it would appear that the *Mullis* case is merely an expected extension, and clarification of the law. However, the decision in the instant case has far more impact than mere clarification of existing law. The Supreme Court of Florida made it clear that *no* policy exclusions of any manner contrary to the intent of the Uninsured Motorist Statute are permissible.

> Insurers or carriers writing automobile liability insurance and reciprocal uninsured motorist insurance are not permitted *by law* [Florida Statutes section 627.0851] to insert provisions in the policies they issue that exclude or reduce the liability coverage prescribed *by law* for the class of persons insured thereunder . . . .[26]

Although an analysis of no-fault insurance[27] is clearly beyond the scope of this note, it is obvious that beginning January 1, 1972, uninsured motorist coverage will not apply where first party benefits are payable under no-fault insurance. However, *Mullis* will still have a highly significant effect in the area of automobile insurance for two important reasons: 1) there are many areas which are not covered by no-fault insurance[28] and 2) *Mullis* is not limited to uninsured motorist coverage. The thrust of the case is that it will serve as a standard for the courts to apply in interpreting *any* insurance policies written pursuant to statute, including the No-Fault Statute. The Supreme Court of Florida in *Mullis* made it clear that any terms in an insurance policy which are contra to the intent of a governing statute will be rendered void by the courts.

It is, therefore, ironic that the No-Fault Statute contains an express statutory exclusion from coverage[29] that is strikingly similar to the contractual exclusion held invalid in *Mullis*. The instant case still clearly

24. Mullis v. State Farm Ins. Co., 252 So.2d 229 (Fla. 1971).

25. *See* notes 7 and 17 *supra* and accompanying text.

26. Mullis v. State Farm Ins. Co., 252 So.2d 229, 234 (Fla. 1971).

27. *See* Fla. Laws 1971, ch. 252.

28. *Id.* The following are *some* of the areas excluded from coverage in the new No-Fault Statute: (1) all vehicles which are not four-wheel motor vehicles (2) all public livery conveyances for passengers (3) vehicles used primarily in the occupation, profession or business of the insured. Fla. Laws 1971, ch. 252, § 3. Further, an injured party can bring an action against the defendant for pain and suffering where (1) medical costs exceed $1000 or (2) the injury consists of any of the following: (a) permanent disfigurement (b) a fracture of a weight-bearing bone (c) loss of body member (d) a compound fracture (e) permanent injury within reasonable medical probability (f) permanent loss of a body function (g) death. Fla. Laws 1971, ch. 252, § 8(2).

29. Fla. Laws 1971, ch. 252, § 7(2)(a) provides that any insurer may exclude benefits: "For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy . . . ."

dictates that insurance policies must comply with public policy. However, because of the apparent conflict between the No-Fault Statute and the Uninsured Motorist Statute as interpreted by the Supreme Court in *Mullis*, it is unclear exactly what the present public policy is concerning the specific exclusion of coverage in the instant case.

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CIVIL RIGHTS: ARE PRIVATE CONSPIRACIES REDRESSABLE IN FEDERAL COURTS?

Petitioners, Negro citizens of Mississippi, filed an action for damages in the United States District Court for the Southern District of Mississippi. The complaint alleged that respondents, certain white citizens of Mississippi, conspired to assault the petitioners, who were traveling upon the highways of Kemper County, Mississippi, near the Mississippi-Alabama border. Petitioners further alleged that, pursuant to the conspiracy, the respondents, mistakenly believing the driver of petitioners' vehicle to be a civil rights worker, blocked their passage on the public highways, and, threatening murder, forced them from the car and inflicted serious physical injury by clubbing them while holding them at gunpoint. Petitioners sought to invoke federal jurisdiction under the language of 42 U.S.C. section 1985(3).[1] The District Court dismissed the complaint for failure to state a cause of action, relying on *Collins v. Hardyman*,[2] in which 42 U.S.C. section 1985 (3) was construed as reaching only conspiracies under color of state law.[3] The Court of Appeals affirmed,[4] and certiorari was granted. The Supreme Court of the United States *held*, re-

1. 42 U.S.C. § 1985(3) (1965) provides:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

2. 341 U.S. 651 (1951).

3. The standard definition is found in United States v. Classic, 313 U.S. 299, 326 (1941):

> Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken under color of state law.

In cases involving civil rights, "under color" of law has been consistently equated with the "state action" requirement of the fourteenth amendment. *See, e.g.*, Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U.S. 649 (1944); Hampton v. City of Jacksonville, 304 F.2d 320 (5th Cir. 1962).

4. Griffin v. Breckinridge, 410 F.2d 817 (5th Cir. 1969).